

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING  
PORTSMOUTH, NEW HAMPSHIRE  
CITY COUNCIL CHAMBERS**

**7:00 P.M.**

**JULY 15, 2003**

**MEMBERS PRESENT:** Chairman Charles Le Blanc, Vice-Chairman James Horrigan; Nate Holloway  
Bob Marchewka, Alternate Arthur Parrott and Alternate Steven Berg  
**MEMBERS EXCUSED:** Alain Jousse, Christopher Rogers, David Witham  
**ALSO PRESENT:** Lucy Tillman, Planner

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**I. APPROVAL OF THE MINUTES**

May 27, 2003 Minutes - A motion was made and seconded to accept the minutes from the May 27, 2003 meeting and it was approved unanimously with a 7-0 vote.

Excerpt from June 24, 2003 Minutes – Revision to Page 6, second paragraph, 4<sup>th</sup> line, change “were” to “where”. A motion was made and seconded to accept the corrected draft minutes from the June 24, 2003 meeting and it was approved unanimously with a 7-0 vote.

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**II. OLD BUSINESS**

A) **Request for Re-Hearing** for Petition of Lawrence and Ruth Gray, **80 Currier’s Cove**, requested by Ralph W. Woodman, Jr., Esq., on behalf of Mr. & Mrs. Marvin Lesser and Mr. & Mrs. James Powers. Said property is shown on Assessor Plan 204 as Lot 14 and lies within the Single Residence A district.

Mr. Parrott made a motion to grant the request for re-hearing. Vice-Chairman Horrigan seconded. Mr. Parrott felt that the Motion for Re-hearing raised issues of procedure, issues of substance and issues of truthfulness with respect to information presented to the Board. Therefore, he did not think it was a frivolous, routine or pro forma request for re-hearing. It appears to have some substance to it, in particular with respect to the analysis of facts and representations that this Board had been misinformed by attorneys. The only way to put those issues to rest in his view was to grant the re-hearing request.

Vice-Chairman Horrigan seconded as he found himself in the middle of a tangle with regards to the last part of the petition that is entitled New Evidence. The proposal to put the deck within the 100’ buffer zone had been before the Board a number of times and he originally voted against the first petition because the Conservation Commission had found reasons to recommend that it be denied. As he indicated last month when the Petition came back in an altered form, as the minutes clearly show, he was relying upon the advice and insights of the Conservation Commission. There were statements made at the hearing to the effect that the Conservation Commission had no problem with this new petition and he sees some differences between the way the minutes were written up in that regard and some direct quotes that the Petitioner requesting the re-hearing has given them on Pages 11 and 12. They give a slightly different impression as to what happened. Vice-Chairman Horrigan was concerned about that because the major basis of his vote was the viewpoint of the Conservation Commission. Now it appears that they never discussed this new proposal and most of the rebuttal and reaction to this new petition was that the Attorney representing the Grays and the Grays themselves were informed by the Planning Department that Mr. Sturgis, the Chairman of the Conservation Commission, apparently looked at the plan and apparently had no problem with it. That may well be but that strikes him as being a little ambiguous and he feels a little uncomfortable letting it go with that. The whole proposal has dragged on a year and a half or longer and he feels badly about dragging it down again but his vote was misinformed. He did not feel that

there was any material misrepresentation but rather there was confusion over exactly what was the viewpoint of the Conservation Commission, if any at all. At this point, he was not even convinced that they even looked at this new proposal. Until he can determine that he felt uneasy casting a vote presuming that those folks had looked at it.

Mr. Marchewka felt that, if the Conservation Commission felt it important enough to vote on or to express their opinion about, they would have showed up at the meeting and/or provided them with a letter. They did not show up at the meeting and there was no correspondence and because of that he assumed they did not have a problem with it. For that reason he was comfortable with the vote that he cast at the last meeting and because of that he did not see any new evidence. Mr. Marchewka did not believe that there was any misrepresentation. He would not support re-hearing the petition.

Mr. Berg agreed with everything that Mr. Marchewka said and added that the explanation from the Planning Department as to who spoke to Mr. Sturgis and when and what he had to say and what he didn't say have been clarified as well as the statement submitted by Attorney Pelech on behalf of Dr. and Mrs. Gray, again, clarifying exactly who spoke to who and when. This is sufficient for him so he will not support the Motion.

Chairman Le Blanc also indicated that he would not support the motion. He believed that what was presented to them at the last meeting was as factual and as truthful. Some of the arguments that were brought up about whether there was a roof on the initial deck or not were not countermanded at the last meeting. Obviously if the requestor of this re-hearing knew it now, he must have known it at that meeting. He did not feel that there was anything new in this request for rehearing that would warrant a re-hearing of this case and he believed this should be denied.

The motion to grant the Re-Hearing failed with a 2-4 vote, with Mr. Marchewka, Mr. Holloway, Mr. Berg and Chairman Le Blanc voting in the negative. The re-hearing was denied.

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**I. PUBLIC HEARINGS**

1) Petition of **Hayscales Realty, Trust, owner**, for property located at **236 Union Street** wherein the following were requested 1) a Variance from Article II, Section 10-206(2) to allow a 48' x 66' second floor addition for two dwelling units on a 5,000 sf lot where 7,000 sf is the minimum lot area required for two dwelling units, 2) a Variance from Article II, Section 10-206 to allow 1,800 sf on the first floor to be used as workshop space for the repair and storage of the owner's vehicles with one employee; and 3) a Variance from Article XII, Section 10-1204 table 15 to allow 8 non-conforming parking spaces and travel way to be provided onsite where 10 parking spaces are required. Said property is shown on Assessor Plan 135 as Lot 22 and lies within the Apartment district. Case # 7-1

Dr. Terry Bennett, the grantor of Hayscales Trust, addressed the Board. He stated that, quite simply, it was an old building, the lot size is not within anybody's control. The Regans, who owned it previously, split the parcel. It is a non-conforming building in almost every aspect. It has been a commercial building right along and it remains a commercial building. It is a shop and office downstairs and that will stay the same. They would like to make it look more like the neighbors with a standard peak roof, 2 story building, and they would like to put two residential units of about 1,300 – 1,400 s.f. each on the second floor. He was not sure how the parking regulations work but he believed the two dwelling units had to have 1 ½ or 2 spaces per unit. He was not sure why he would need more than 2 spaces for an ordinary office and the garage really doesn't need more than one space. There are eight pre-existing spaces and the regulation requires ten. As far as the hardship, he couldn't claim it was a personal hardship but rather the hardship was on the neighbors. It was an ugly building and he would make it more conforming. It would increase the tax base and that sort of thing. He took the ugly building across the street and made it into a very nice building, which helped the neighborhood. He would propose to do the same thing with this building.

Mr. Holloway asked where the pre-existing parking spaces were located? Dr. Bennett indicated that the building was set back from the street and there would be four cars on the left side and four cars on the right side and there would still be a 25' aisle down the middle. Mr. Holloway indicated that he went by yesterday and he does not believe he will be able to get eight parking spaces in the space provided. Dr. Bennett admitted that the spaces were undersized but they will hold a Mercedes or a Jeep with room to open the doors. When Pro-Portsmouth was there between six and eight cars parked there. Mr. Holloway asked about the trailer in front of the building and the steel table in the rear. Dr. Bennett indicated that the trailer was only temporary and would be removed. He indicated that he had no knowledge of a steel table and assumed it must belong to a neighbor.

Vice-Chairman Horrigan referred to the second variance for a workspace for repair and storage of vehicles but Dr. Bennett referred to it as an office. Vice-Chairman Horrigan asked for clarification. Dr. Bennett indicated that the downstairs had always been split between a finished office that had windows, heat, running water, and then there was a workshop space. He had always maintained the workshop space and it was important to him as it has a 13' ceiling and he can put a lift in there which allows him to work on cars. The office is the space being used for Dean for America. Dr. Bennett indicated that there are actually two offices on the first floor. There is a dividing wall and when he stops practicing medicine in Rochester he may have a little medical office there.

Mr. Parrott referred to the rough sketch entitled Parking Area, and it said 7' wide and 8' long in two different places but he couldn't figure what this referred to. Dr. Bennett indicated that the parking spaces are 7' wide and 20' long. Mr. Parrott did not feel that there would be any room between cars to open the doors and with snow it would be out of the question. Dr. Bennett indicated that the drawing that they were given was inaccurate but the parking spaces were long standing. Mr. Parrott also referred to the gas meter that was in an unsafe position and would be at risk of being damaged by parked cars.

**SPEAKING IN OPPOSITION TO THE PETITION:**

Christopher Regan, of 226 Union Street, addressed the Board. He first distributed a Petition in objection that was signed by neighbors. He felt that the parking on Union Street is out of control and it has been that way for 20 years. The parking space lines that Dr. Bennett referred to were painted in the last month. Mr. Regan had a picture of when they had their business at that location showing only 5 vans parked in front of the building and he felt that was just about all that you could fit in that space. He felt it would be impossible to set the parking spaces up the way he indicated on his plans.

Jack McGee spoke on behalf of Regan Electric Company, Inc., which owns the abutting premises. Also present was Joseph Regan, President of Regal Electric. Attorney McGee felt that the Board had already seen one of the principal concerns that the Regan have, which is parking. Attorney McGee distributed a copy of a photograph of when the Regans owned the premises, showing 5 vans parked in front of the building. The picture clearly shows that you can fit 5 vehicles comfortably in front of that building. The property card on 236 Union Street also had a photograph showing Pro Portsmouth showing 3 vehicles parked in front of the premises and it shows that 3 vehicles take up more than half of the space in front of the building. Attorney McGee felt that the problem with Dr. Bennett's proposal is that it's just too intense for the area. He is attempting to add two residential units to the office and workspace that already exist. Dr. Bennett presented an un-engineered plan indicating 8 spaces which means he only needs a variance for 2 spaces. Based on the evident that Attorney McGee submitted, he questions whether he can fit 8. He felt that before the Board could accept that, they should require engineered drawings. Parking is critical and is already a problem in that area. The lot is too small and he had not heard anything from the Petitioner concerning hardship or an inability to reasonably use this land. The fact that the building is ugly, which is the only reason mentioned by Dr. Bennett to put two residential units in the building, doesn't cut it. Nothing was mentioned or argued by Dr. Bennett that this would not adversely effect the abutting properties as far as value. Speaking on behalf of Regan Electric, they strongly take the position that this effects the value of their property. Increasing the parking problems does nothing to help the values. In general, Attorney McGee argued that this would decrease the values of the residences in the area and therefore does not qualify. It certainly was not the spirit and intent of the ordinance to overcrowd a residential neighborhood. They respectfully requested that the Board deny the petition.

Vice-Chairman Horrigan asked why he felt the surrounding property values would be effected? Attorney McGee indicated that the primary reason was the parking. Parking is already a problem on Union Street and this

type of development requires 10 parking spaces according to the zoning ordinance. Dr. Bennett cannot even produce the eight that he is requesting a variance for. This will lead to tenants and visitors parking on the street.

Patrick Malloy, of 235 Union Street, spoke in opposition. His principal concern was parking, which was adequately explained by Attorney McGee. He also provided a photograph that he submitted to the Board, showing the width of the parking spaces, which were 79". His automobile was 71". That provides 4" on each side of his automobile if he parked in that spot. He indicated it would be impossible for anyone to park four cars in that space unless they had convertibles and walked out over their trunks to get out. Mr. Malloy felt that Dr. Bennett has expanded his business across the street into a car dealership and his volkswagon vans are usually parked all along the street.

Chairman Le Blanc read a letter of opposition that was submitted by Webster and Debra Kohlhase, of 187 Union Street.

**SPEAKING IN REBUTTAL:**

Dr. Bennett referred to the photograph submitted by Regan Electric, showing five vans parked in front of the building and indicated that he will be parking sideways rather than straight in. He does not see the parking problem being as severe as everyone is making it out to be.

**DECISION OF THE BOARD:**

Mr. Berg made a motion to deny the petition as presented and advertised. Mr. Parrott seconded. Mr. Berg did not see the applicant having addressed the five tests that are required. They heard from a number of neighbors who were in opposition to the petition and in the absence of evidence to the contrary from the applicant, he felt they have to listen to the neighbors. The public is opposed to it. The applicant did not address whether the requested variance was consistent with the spirit of the ordinance. Neither substantial justice being done nor a hardship were addressed. The neighbors feel that their rights would be injured. The applicant did not address the relationship between the zoning and the restriction on his property. Attorney McGee indicated that there was nothing stopping Dr. Bennett from using the building as it exists. Therefore, to intensify the non-conformity does place a burden on the applicant. The same thing could be said about the final requirement, being the zoning restriction as applied to the specific property interferes with the reasonable use of that property. Dr. Bennett did not address how it interferes with his reasonable use. The argument for diminishing the value of surrounding property was addressed by the abutter's attorney and made an argument for how it will diminish the values of surrounding properties and the applicant did not provide any refuting information. Simply on the basis of failing to meet the burden, Mr. Berg was opposed to the application.

Mr. Parrott agreed with Mr. Berg and added that the applicant has not even attempted to convince the Board that there is a hardship on the property that should lead the Board to grant this variance request. There were very specific steps that have to be applied in order for the Board to support a motion and there hasn't even been any information by which the Board can reasonably discuss whether or not the hardship standards can be met. Whether the variance is consistent with the spirit and intent of the ordinance and whether the requested ordinance will be contrary to the public interest can both be combined and addressed with respect to whether an auto repair shop in a residential district is in the public interest. Mr. Parrott indicated that repair shops tend to work with the doors open and that would create noise in a residential area. Mr. Parrott indicated that the sketches that were provided by the applicant did not even make sense. Mr. Parrott supported the Motion to deny the variance.

Mr. Marchewka addressed the hardship issue and the three tests. Considering the unique setting of the property in its environment, he did not feel this request applied. The zoning ordinance, as it is applied, still allows a reasonable use of this property, which would be for residential use or limited office use. The property is unique in its setting as it's a commercial building in a residential setting. Mr. Marchewka felt there was a fair and substantial relation between the general purposes of the zoning ordinance and the specific restriction on the property which were to help keep the neighborhood residential and keep the values of the residential properties up. The variance would injure the public and private rights of others if granted, through excessive parking and through the expansion of the auto repair business. He supports the motion and also reminded the Board that

parking was an issue last month with regard to putting in a campaign office. The amount of parking spaces were enough for that use but if they were to add two additional apartments to the property, that would be too much.

Chairman Le Blanc believed that the requested variance would be contrary to the public interest as it would over-intensify the use of a particular piece of property by putting parking onto the street. There is ample evidence that the parking spaces presented to the Board were not in conformance with what is required by the ordinance and this will force people to park onto an already congested street. Special conditions exist with respect to this property. The zoning restrictions as applied to this specific property do not interfere with the owner's reasonable use of the property. It can be used for the political office that is going in. It can be used for an inside repair shop, but the problem is in adding residential units to it. That increases the number of parking spaces on the property and the space that is there does not meet that particular requirement. Safety is a prime consideration of any variance that the Board grants. Chairman Le Blanc felt that the variance would injure the public and private rights of others. It is a non-conforming building on a very small lot and to put two residential units on top of what is already there just flies in the face of any reasonable use of the property. For all of those reasons, he felt that this petition should be denied.

Ms. Tillman clarified that the property cannot be used for a repair facility without a variance being granted.

The motion to deny passed unanimously with a 6-0 vote.

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2) Petition of **Old Tex Mex, LLC, owner**, for property located at **3510 Lafayette Road** wherein the following are requested: 1) a Variance from Article III, Section 10-301(8) to allow a 28' x 28' addition with a 47.1' front yard and a 60' x 70' garage with a 79.4' front yard where 105' is the minimum required, and 2) a Variance from Article II, Section 10-206 to allow said 28' x 28' addition to used as part of the previously approved office space. Said property is shown on Assessor Plan 297 as Lot 8 and lies within the Single Residence A district. Case # 7-10

Chairman Le Blanc advised the applicant that there were only 5 members sitting for this hearing and he had the choice of going forward or tabling the petition until next month. Four positive votes were required for a variance.

**SPEAKING IN FAVOR OF THE PETITION**

Michael Brown, of Old Tex Mex, addressed the Board. His Attorney, Peter Loughlin, was unable to be present however he had submitted a letter to the Board explaining what they were attempting to do. They appeared before the Board last month to change the use to office space. They have since purchased the property and did some research on the existing patio. They found that there was an existing foundation so they are now looking to use the patio for part of their warehouse. Mr. Brown indicated that the patio was setback from the front of the building.

Ms. Tillman indicated that she had missed the variance for the front yard setback last month.

**DECISION OF THE BOARD**

Mr. Parrott made a motion to grant the petition as presented and advertised. Mr. Holloway seconded. Mr. Parrott felt that they had addressed this thoroughly last month, however, he would run through the criteria once again. He did not feel that this was contrary to the public interest as there are woods across the street and the adjacent property would not be effected. He did not see any other public interest that would be effected. Special conditions exist with respect to the property in the sense that this is a long existing property and has been in the same location with respect to the road and even if Route One were widened there would be no interference with the building. It is a unique piece of property in the sense that it is the only one of its kind along that way. In fact, most of the other buildings were closer or as close to the road as this one so he didn't

see any fair and substantial relationship between the general purpose of the zoning and this particular property. The zoning clearly would not injure the private rights of others. The requested variance is consistent with the spirit of the ordinance, which is to encourage the constructive re-use of existing buildings in a positive manner. Substantial justice is done by granting the variance as the people want to move their local business to this location and that can only be a positive thing. Lastly, the granting of the variance will not diminish the values of surrounding properties. The present, somewhat dilapidated condition of the building, along with the knowledge that it has failed in the past to be successful, since it was a mexican restaurant, putting a new business there would only increase the value of surrounding properties.

Mr. Holloway had nothing to add. He felt this property would be put to a better use.

A motion to grant as presented and advertised passed unanimously with a 5-0 vote.



3) Petition of **Colleen J. Romano, owner**, for property located at **3 Coakley Road** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow a 14' x 14' one story addition to the rear of an existing single family dwelling with: a) an 8' rear yard where 30' is the minimum required, and b) 23.2% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 234 as Lot 49 and lies within the Single Residence B district. Case # 7-2

Colleen Romano, owner of 3 Coakley Road, addressed her petition. She presented a Petition signed by her neighbors in support of her application to the Board. She was requesting the variance as the zoning restrictions as applied to her property did not allow a reasonable use of her property. Their existing space does not allow them to have family gatherings, including Christmas, birthdays and holidays. She did not believe this would injure the public or private rights of others, nor diminish the values of surrounding properties. In addition, even though there is an 8' set back, the lot behind them is not buildable due to heavy ledging. This addition would be replacing an existing deck.

Chairman Le Blanc referred to a letter received from Robert and Rebecca Wylie, indicating that they have no objection.

**DECISION OF THE BOARD**

Mr. Parrott made a motion to grant the petition as presented and advertised. Mr. Marchewka seconded. Mr. Parrott indicated that the request was very simple and straightforward. It was replacing a deck with a room that was slightly smaller. The lot in back is currently vacant and the Board has been told that it's not buildable so the variance will not be contrary to the public interest as it's in the backyard of the house and nobody lives in back on the adjacent lot. Special conditions exist with respect to the property as the house is set way back on the lot such that the only place they could put the addition on would be near the back property line. That also creates an unnecessary hardship. The zoning restriction as applied to the specific property interferes with the property owner's reasonable use of the property because of the placement of the house. There is no fair and substantial relationship between the general purpose of the zoning ordinance and the specific restriction on the property because nothing is going to be harmed. There do not appear to be any private or public rights of others that can be harmed. The variance is consistent with the spirit of the ordinance as this is a reasonable use of their property. Substantial justice will be done by granting the variance as these people want to put an addition on the back of their house and the substantial justice would dictate that the variance was granted. Granting the variance would not diminish the value of surrounding properties as it is in the middle of the property and the lot behind it is vacant.

Mr. Marchewka agreed with Mr. Parrott and added that these were very small lots that, by today's standards, would not be allowed. They don't allow for any kind of expansion to the homes that are built on them. While

they don't necessarily consider it a hardship, they do look at a reasonable use of the property and this appears to be a very reasonable request. Especially given that the lot next door is vacant.

The motion to grant passed unanimously with a 6-0 vote.

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4) Petition of **Paige Roberts, owner**, for property located at **1 Walton Alley** wherein a Variance from Article III, Section 10-301(A)(6) is requested to allow a picket fence 4' from the intersection of Walton Alley and Gates Street where 20' from the intersection is the minimum required from the corner. Said property is shown on Assessor Plan 103 as Lot 27 and lies within the General Residence B and Historic A districts. Case # 7-3

Mr. Parrott stepped down from this hearing.

**SPEAKING IN FAVOR OF THE PETITION**

Paige Roberts, of 1 Walton Alley, spoke to her Petition. She indicated that it was a straightforward application. She felt the pictures that were submitted to the Board showed the damage that had been done to her fence by cars turning at the intersection. Gates Street is one way from Marcy Street towards the river. In order for a car to go up Walton Alley, they usually veer off to the left, up onto the sidewalk, and in order to miss hitting a telephone pole they will hit her fence instead. Site distance is not an issue, making this request within the spirit and intent of the ordinance as it's not relevant. She also mentioned that Walton Alley is very narrow, really only the width of a single, normal sized vehicle. The larger vehicles are the problematic vehicles. She is asked to move the corner of her fence a few feet as it has been hit numerous times in a very short time. It is becoming a hardship as she has already paid for it to be replaced a few times and for it to keep happening is difficult to deal with.

Chairman Le Blanc noted that her plan showed the fence being 3' from the corner but we advertised for 4' from the corner. Ms. Roberts was agreeable to having her request changed to 4'.

Thanasis Tournas, of 112-114 Mechanic Street, spoke in support of the petition. He felt it met all of the tests as it was good for the neighborhood, it will enhance the value of Ms. Roberts property as well as the surrounding properties, no one will be injured by it, it makes sense and is a win-win situation.

**DECISION OF THE BOARD**

Vice-Chairman Horrigan made a motion to grant the petition as presented and advertised. Mr. Holloway seconded. Vice-Chairman Horrigan pointed out that the ordinance requires that a fence be set back 20' on this property and that would really look peculiar on this property and, in fact, would make a fence pointless. The requested variance would not be contrary to the public interest. The public interest is well served by the current fence as it is a very charming feature of this property and it has historical overtones as well. It certainly is in the public interest to preserve it. It is unfortunate that cars continue to damage it. If it needs to be moved back 4' than so be it. As far as the hardship is concerned, the zoning restriction would interfere with the reasonable use of the property which is partly distinguished by this picket fence. It would be unreasonable to require that the fence be placed 20' back. There is no fair and substantial relationship between the zoning ordinance and this restriction because the zoning ordinance, in part, is designed to preserve historical and architectural features such as this. The variance would not injure the public or private rights of others as we have not heard anyone speak in opposition and one speaker was in favor. The variance was consistent with the spirit of the ordinance because one of the primary purposes of the ordinance is to preserve this very kind of property. Substantial justice would be done by granting the variance because, if not granted, the property owner is going to have to keep replacing it every time someone bangs into it with their car. Finally, granting the variance would not

diminish the values of surrounding properties. The fence would remain in an attractive state and enhance the values of all properties in the immediate neighborhood.

Mr. Holloway felt this was an obvious hardship on the petitioner. If this petition is denied, it will definitely cause her more hardship. He felt the petition should be approved.

The motion to grant with a 4' setback passed unanimously with a 5-0 vote.

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5) Petition of **Millwood Partners LP VII, owner, Kristen Samson d/b/a Portsmouth School of Ballet, applicant**, for property located at **210 West Road** wherein a Variance from Article II Section 10-209 was requested to allow a ballet school in a district where such use is not allowed. Said property is shown on Assessor Plan 267 as Lot 21-3 and lies within the Industrial district. Case # 7-4

Mr. Berg stepped down, leaving 5 voting members. The applicant chose to go forward.

**SPEAKING IN FAVOR OF THE PETITION:**

Attorney Bernard Pelech addressed the Board on behalf of Kristen Samson, the proprietor of the Portsmouth School of Ballet. Also present was David Choate of Coldstream Real Estate Advisors who are handling the property for the owner. 210 West Road is located in an industrial district but is not a typical industrial property. It is multi-use building with about 8 businesses in the building. The predominant use is a distribution/distributor/office type of use with some retail components. Attorney Pelech felt this property is differentiated from a lot of the single user light or heavy industrial property that you would normally find in an industrial zone. He felt that using one of the 3,500 s.f. units for the Portsmouth School of Ballet is an appropriate use because the vast majority of the ballet classes that Kristen would be conducting would be between the hours of 3:30 pm and 9:30 pm. Most of the students are school children and most of their classes are after school. The Portsmouth School of Ballet has been in business for 10 years and hundred of school children have had ballet instruction at this school and it serves a public need and is in the public interest that they be able to continue to operate. One of the reasons that they are leaving their existing site is that they have out-grown it. Parking is not advantageous there, access is difficult and it's not the ideal site for this school.

Attorney Pelech indicated that the granting of the variance would not result in any diminution in value of surrounding properties. The Overhead Door Company, a direct abutter, provided a letter in support of the petition. This is not an industrial use that would generate offensive noise, smoke, odor, heat, glare or anything that heavy industrial use would. This use would be conducted entirely inside the building. The hours of operation would not conflict with the surrounding properties, which are 9:00 – 5:00 businesses.

Attorney Pelech felt this petition met the hardship test and this is a reasonable use of the property. The ordinance does not allow this use in the industrial district. It does allow it in the general business district, however, it is very difficult to find large spaces in the general business district. There is no fair and substantial relationship between the purpose of the ordinance and the property, given the type of uses within this building, as opposed to what would be considered a typical industrial use. This does not violate the intent of the ordinance, it is not a use that needs to be segregated or a use that is over-intensive. It is very compatible to the surrounding uses. No public or private rights of others will be interfered with.

Attorney Pelech addressed the third test of whether substantial justice would be done by granting the variance. He did not believe it would be of any benefit to the public if the variance were denied. This is a business that has been in existence within the city for the past 10 years and has a very strong following. The hardship upon the owner is not outweighed by benefit to the general public in denying the variance. It was not believed that this was contrary to the spirit or intent of the ordinance. The surrounding uses are all general business type uses



rather than heavy or light industry. The intent of the ordinance was to segregate businesses that were not compatible with general business uses.

They believed that the granting of the variance would not be contrary to the public interest but, rather, would benefit the public interest. This business has served the community for 10 years and provides a service to the community.

Mr. Marchewka asked if the units in the building were condominium units? David Choate, of Coldstream Real Estate Advisors, indicated that, except for the Overhead Door unit, the building is owned by Millwood Partners. It technically is condominiums but only has two owners.

Vice-Chairman Horrigan asked which business is leaving? Mr. Choate indicated that EOS Research has left and there is a For Lease sign in the window. Mr. Choate stated that the unique type of property that the ballet school needs makes it very difficult to find a property and maybe that is something that needs to be addressed down the road in the ordinance. It is not only a function of size and height but also the noise factor as you cannot go into a typical general business building and have this use because the abutting tenants would object because they are not the type of uses that expect noise. The type of uses that are going into the industrial district are becoming less and less typical of what is in the ordinance and they are becoming more office oriented, warehousing distribution with a retail component. It is becoming increasingly difficult to rent out this commercial space and this particular space has been for rent for six months.

Mr. Parrott asked what the anticipated duration of this use would be and would he consider this an interim location for this school? Mr. Choate indicated that the lease would be 3 years and from a landlord point of view, the abutting tenants aren't going anywhere so, if the school grew to any degree they would have to move.

Mr. Parrott asked about the age of the children who would be attending the school and what type of parental supervision would they have? Kristin Samson, owner of Portsmouth School of Ballet, indicated that the youngest children would be 2 ½ - 3 years old and the oldest are adults. The class size is limited to 15 and she would be one of the teachers. At the younger ages, the parents stay and watch the class. She has very strict supervision policies and children are not allowed to leave the classroom without a parent present. Each faculty member is responsible for the students in her class. She currently has 30 classes and would like to expand that to 40 classes but not expand the size of the classes.

Chairman Le Blanc asked if she held recitals at this location? Ms. Samson indicated that she did not. They do the Nutcracker at the Stratham Co-op School and also an end of the year at Winnicunet High School. They are open on Saturday mornings from 9:30 a.m. to 11:30 when they have a large number of small students, between age 3 and 7. From 11:30 until 3:00 they work with the older students.

**DECISION OF THE BOARD:**

Mr. Marchewka made a motion to grant the petition as presented and advertised. Mr. Parrott seconded. Mr. Marchewka felt that this was somewhat of a difficult case and this Board does not look at industrial property to be used for additional uses very often and, in the past, has taken a careful look at any kind of industrial property that is proposed to be used for something other than industrial use. That being said, he felt that this use doesn't really fit anywhere. It may be a better fit in a general business or retail type building but those buildings generally wouldn't be available for this type of use. Going through the analysis for the variance, Mr. Marchewka did not believe this would be contrary to public interest as this wasn't a retail operation but was a school and that lends more credence to the fact that the Board could allow it in the industrial zone. Special conditions exist with respect to the property for which the variance is sought and literal enforcement of the ordinance results in unnecessary hardship. This is not so much a hardship on the building but it is the use that is being put in there. As a Board, they have to make a determination as to whether it is a reasonable use. Mr. Marchewka felt that it was a reasonable use, it was serving a public purpose, it is not a retail situation where people are going in and purchasing items so that makes it different from most general businesses. No fair and

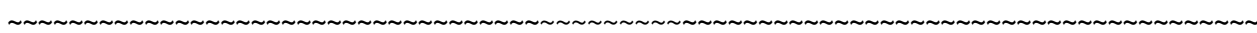
substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction on the property. This again is sort of a gray area so the Board has to look at the reasonableness of this request. Again, Mr. Marchewka felt this was a reasonable request to put a school at this property. There was no evidence that the variance would injure the public or private rights of others. Whether the requested variance is consistent with the spirit of the ordinance is difficult but the Board must look at the use, which is a school, where those are allowed, how the zoning ordinance restricts where schools are allowed. The industrial zone happens to provide a space for this type of operation and many of the other zones, where it might be permitted, don't provide a space for this type of operation. Substantial justice is done by allowing the variance as it allows a school that has been in business for 10 years to grow and stay in the community and continue to service the young people of the community. He also did not see where the variance would diminish the values of surrounding properties and the direct abutter has sent a letter in support and obviously the owner of the remainder of the building is in support. Mr. Marchewka felt for those reasons the variance should be granted.

Mr. Parrott agreed that this is not an intended use in this zone, however, this is a particular use that doesn't seem to fit very well any place else either. It would probably be for a limited duration and the property has not been attractive for other uses that are more compatible for this zone. This is a case where this is an unusual use that can't find a logical home so in this particular case Mr. Parrott felt they could violate some Planning principals and approve it on the basis that it is not going to be detrimental to the public interest or to the neighbors in that area. Therefore, Mr. Parrott will support the motion.

Mr. Marchewka added that, on the surface, it would seem that an industrial location wasn't well suited and many times isn't but this particular building in this particular location is probably better suited than a lot of locations where this would be allowed, such as the strip mall where they are located currently. Those retail locations are very busy with a lot of traffic coming in and out. This particular location would have much less traffic and therefore better suited for an activity like this.

Vice-Chairman Horrigan was reluctant to vote against this motion but he felt there was a more general issue which was the preservation and integrity of our industrial zones. There is a very large public interest involved in that issue as the industrial zone is a place to create better paying jobs and employment for the Portsmouth work force. At the same time, industrial uses have a problem of creating conflicts with adjoining neighbors if the businesses are not of an industrial nature. It's been argued tonight that the applicant is a school but there is no relationship between a ballet school and industrial businesses. A Technical School might have some mutual inter-relationship but these are two very different types of operations. To say that we can put a Ballet school in an industrial site means, to him, that the Industrial Zone has no meaning whatsoever. Therefore, he feels that this petition fails on the public interest question. As far as the hardship is concerned, to argue that the zoning restriction of our industrial zone prohibits a reasonable use of property is a little stretched. There are over 20 allowed uses in the industrial zone plus many more with Special Exceptions. The industrial zone is one of the most generous zones that the city has in its ordinance. Each time we lose an industrial site in the City of Portsmouth, it's hard to get it back and to argue that this has already been done in the past is the very thing that he is afraid of. Every time the Board says Yes, the precedent it set and they have demolished the Industrial Zone category. Vice-Chairman Horrigan felt the Board had to be very careful about each individual decision they make. Speaking for himself, he is very wary of allowing non-industrial uses into the industrial sites. Vice-Chairman Horrigan felt that there is a fair and substantial relationship between the general purpose of the ordinance and the specific restriction. There is a point where you are mixing activities that are just too different. He agrees with the Planning Department and believes it is a mistake to approve a business which involves children in an industrial site.

The motion to grant failed with a 2-3 vote, with Vice-Chairman Horrigan, Mr. Holloway and Chairman Le Blanc voting in the negative.



6) Petition of **Gerald W. and Katharin G. Smith, owners**, for property located at **306 South Street** wherein the following were requested: 1) Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) to allow: a) an irregular shaped 383 sf kitchen ell and second floor addition with a 6'6"± right side yard where 10' is the minimum required, and b) a 14'3" x 14'6" one story addition with an 8'4"± right side yard where 10' is the minimum required, and 2) a Variance from Article IV, Section 402(B) to allow a 21' x 25' detached garage with a 4'± left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 111 as Lot 10 and lies within the Single Residence B and Historic A districts. Case # 7-5

**SPEAKING IN FAVOR OF THE PETITION:**

Gerry Smith, of 306 South Street, spoke on behalf of his petition. They were originally intending to rebuild what currently existed but with interest rates being what they are, they decided to do some renovations on the back of their house, which contains the kitchen, the dining area and above is the master bedroom. There is no foundation to speak of under this section but rather it is sitting on stone. The roof is coming down, the wall fell out and the plaster is continuously cracking. What started as an interior renovation has evolved into something larger. They are intending to push out from the existing footprint 1' directly towards the backyard. This is behind the sitting room and the kitchen L. The second part of the petition is the garage which is a separate project but they would like to do it simultaneously. That is straightforward to increase an inadequate garage which is currently 10' x 19' and can barely fit an average sized car with no storage. There is no storage in the house. They have three vehicles and would like to store at least two of them indoors, plus have some storage. It is not worth trying to salvage the old garage so they would like to take that down and replace it with a new garage, but keeping the same sideyard. They can't move it inward any more because of the house. Mr. Smith submitted letters of support from his immediate abutters.

**DECISION OF THE BOARD:**

Mr. Berg made a motion to grant the petition as presented and advertised. Vice-Chairman Horrigan seconded. Mr. Berg indicated that the house is currently non-conforming and the proposed changes do not intensify the non-conforming setbacks. The applicants are proposing to improve their home by renovating and expanding slightly, neither of which are any closer to the property lines. Therefore, Mr. Berg saw that as being consistent with the spirit of the ordinance. It is a residential improvement in a residential neighborhood. There is no reason to believe that any diminution of value will occur and the neighbors have written letters in support. As far as being contrary to the public interest, the residential use is staying a residential use, it is staying a single family, so there is no question at all regarding public interest. The hardship is the fact that it is a neighborhood of narrow lots. This is an older house and as a result, literal enforcement would prohibit somebody from making their own home nicer. There is no intensification of what makes the property non-conforming. It is reasonable to expect a homeowner to want to expand their home and this is a very small increase to the house. People now expect a two-car garage so that is also reasonable. Therefore, there is no fair and substantial relationship between the general purposes of the ordinance and the specific restriction on the property. The variance would not injure the public or private rights of others, which was covered by the neighbor's letters of support. As a result of the hardship of how the home was placed on the property when it was built, substantial justice will be done by granting the variance.

Vice-Chairman Horrigan indicated that many of the homes in this general neighborhood are being renovated. He believed it was in the public interest to allow them to continue with these renovations. He agreed with everything that Mr. Berg said and added that the lot is very large but, as often happened when these houses were originally built, they put the houses right up on the street and left all of the additional land to the rear which restricts the homeowners from expanding. That creates a hardship. Also, expanding the size of the garage has some public interest aspects. The current garage is very small and the new garage will allow them to park two cars off of the street which will improve the neighborhood in general.

The motion to grant passed unanimously with a 6-0 vote.



7) Petition of **Anne E. Hett, owner**, for property located at **80 Richards Avenue** wherein a Variance from Article IV, Section 10-402(B) is requested to allow a 20' x 22' one story garage with: a) a 2'9"± left side yard and less than a 1' rear yard where 10' is the minimum required for both side and rear yards, and b) 2% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 136 as Lot 13 and lies within the General Residence A district. Case # 7-6

A typo was brought to the attention of the Board that the building coverage would be 36.2% rather than the 2% indicated on Agenda.

**SPEAKING IN FAVOR OF THE PETITION:**

Anne Hett, of 80 Richards Avenue, indicated that she would like to replace the existing garage with a new structure. The current garage is falling down. Her family has lived there since 1913 and it has always been there. When they started blasting to build the Margeson Apartments, the garage started to fall. She would be replacing the existing garage and using the exact same footprint. She distributed pictures of the current garage.

**DECISION OF THE BOARD:**

Mr. Berg made a motion to grant the petition as presented and advertised. Mr. Parrott seconded. Mr. Berg felt the garage had fallen into disrepair and the property owner would like to replace it with a new structure as repair is no longer feasible. The setbacks stay the same and the lot coverage stays the same. The literal enforcement of the zoning restriction prohibits a property owner from replacing a dilapidated structure on their property. The intent of trying to prevent non-conformity from being replaced is to bring neighborhoods towards conformity. Here there is a residential use in a residential neighborhood and the problem is an accessory use. The intent of zoning doesn't apply. Literal enforcement of the zoning ordinance prevents Ms. Hett from rebuilding her garage and that was not the intent of the zoning ordinance. No fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction. It is the spirit of the ordinance to encourage residential uses in the neighborhood and permits accessory uses as well. Substantial justice will be done by granting the variance because it will allow the property owner to maintain or restore the value of her property and cure an eyesore. Granting the variance will not diminish the value of surrounding properties and, if anything, the opposite will happen because the subject property is going to be nicer. The requested variance will not be contrary to the public interest as it really doesn't have any impact on the public. Mr. Berg encouraged the public to speak to their City Councilors to have these type of ordinances revised so that others do not have to go through this procedure.

Mr. Parrott indicated that this was a very small lot and this was the only place to put the garage. This is straight forward replacement to the benefit of the property owner as well as the general public and the neighborhood.

Vice-Chairman Horrigan indicated that they could ask the property owner to move the garage closer to the house but that would totally eliminate the owners line of sight, trying to exit the garage onto Richards Avenue, because it is very close to the Richard Avenue/Middle Street intersection. Therefore, there is a safety issue involved and it is best to leave the garage where it currently sits.

Chairman Le Blanc felt that there was a valid reason why people are requested to come before the Board of Adjustment when they are replacing structures. The structure is being torn down and it will be replaced. When that happens, the new ordinances come into effect, regardless of whether the place has been there since 1800 or 1999. The reason for that is that the City wants to bring all properties in the City within conformance of the current ordinance.

The motion to grant passed unanimously with a 7-0 vote.



8) Petition of **Roger M. Chapdelaine Revocable Trust, owner, Norman and Leanne Gray, applicants**, for property located at **230 Lafayette Road Unit D12** wherein the following were requested 1) a Variance from Article II, Section 10-206 to allow Unit D12 to be used as a business office by Career Profiles (medical and general executive search company) in a district where such use is not allowed, and 2) a Variance from Article XII, Section 10-1204 Table 15 to eliminate 1 required parking space for the proposed use where 246 parking spaces are provided onsite. Said property is shown on Assessor Plan 151 as Lot 6 and lies within the Single Residence A district. Case # 7-7

**SPEAKING IN FAVOR OF THE PETITION:**

Norman Gray spoke relative to his Petition. He indicated that there were two parts to his request. The first was a change in use from a retail pharmacy to a general business office use and the second was a request to eliminate one parking space. The hardship is that the office park is located in a residential district and offices in this park are limited to the use as professional offices, a pharmacy (or) clinical laboratory.

Mr. Gray did not feel that the requested variance would be contrary to the public interest because a retail business existed on this site for several years. There was more traffic in and out of the park when it was an on-site pharmacy. The majority of his business will be done on the phone. This will open more parking spaces and reduce the flow of traffic in and around the park. The zoning restriction as applied to this property interferes with his reasonable use of the property. The zoning restriction prevents the owner from selling his property to anyone but a retail pharmacy, a lab or an approved professional. No fair or substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction on the property. It is highly unlikely that another pharmacy or lab would want to open in this space as it is only 403 s.f. Therefore, an office would be more appropriate. The granting of the variance would not injure the public or private rights of others as its use is consistent with the other businesses located in the Park. There is no longer a need for a strict interpretation on the use of this space and a change in use would be consistent with the spirit of the ordinance. Substantial justice would be done by granting the variance as times have changed and the change in use was consistent with the other business located in the Park. There would not be any diminution of property values.

Mr. Holloway asked if they were using the entire 400 s.f. for the office? Mr. Gray indicated that they were using the 400 s.f. for one office to be used by himself and his wife. The majority of their business is done by phone with an occasional person coming into the office.

Chairman Le Blanc asked about parking. He felt that the parking lot usually seems to be fairly open. Mr. Gray indicated that the office space was only 2/10 of a mile from his house and he planned to walk to work.

Mr. Parrott asked about the parking spaces. Out of the 246 provided, what is the minimum that is required accumulatively for that building? Ms. Tillman could not get that figure which is why she based it on the unit itself and the change in use in this one particular unit.

Mr. Marchewka asked Mr. Tillman why they needed a variance? Ms. Tillman clarified that it was because it was zoned residential with limited approved uses.

**DECISION OF THE BOARD:**

Mr. Marchewka made a motion to grant the petition as presented and advertised. Vice-Chairman Horrigan seconded. Mr. Marchewka indicated that this property was zoned SRA, however, Mr. Gray wants to put an office in an office building, which is a very reasonable request. That would not be contrary to the public interest. With regards to the parking, it seems that the previous use would have a greater impact on parking than the proposed use. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship. The zoning restriction as applied to this property certainly interferes with the property owners reasonable use of the property. It is an office park and every building is occupied by an office use. It just happens to be in a residential zone and that should probably be changed. There is no fair and substantial

relationship between the zoning ordinance which restricts the use to residential and the current uses in the building. Clearly, this is an office park and will continue to be an office park for some time. The variance would not injure the public or private rights of others and would probably not have any impact at all. It is consistent with the spirit of the ordinance. The fact that this building is in a residential zone is odd and Mr. Marchewka did not feel that this particular property should be made to conform to any residential standards. Substantial justice would be done by granting the variance as it would allow the property to be used for what it was developed for. Granting the variance would not diminish the values of surrounding properties. There would be no change in any of the residential uses in terms of value and if you were to make the property owner change one 400 s.f. unit to residential, it would impact the commercial uses. For all of the above reasons, the variances should be granted.

Vice-Chairman Horrigan agreed with Mr. Marchewka and addressed the hardship criteria. This building is an office park and the surrounding buildings are also used as offices. The buildings exist as a whole as a professional office park. Many of the offices are medical so the proposal to bring in a medical and general search company is completely harmonious with the neighborhood. It is a reasonable use of the property and fits in perfectly. In the same view, he did not see any fair and substantial relationship between the definitional problems with the zoning ordinance and the business that the petitioners are proposing. He felt this fit the so-called Simplex criteria to a T.

The motion to grant passed unanimously with a vote of 7-0.

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9) Petition of **Parrott Avenue Center for Seniors, Inc., owner**, for property located at **127 Parrott Avenue** wherein a Variance from Article XII, Section 10-1204 Table 15 was requested to allow 22 existing parking spaces onsite where 46 parking spaces are required in conjunction with a proposed 18' x 30' two story addition and existing uses onsite. Said property is shown on Assessor Plan 115 as Lot 3 and lies within the Mixed Residential Office district. Case # 7-8

Chairman Le Blanc pointed out that there were only 5 members on the Board, should the applicant wish to postpone the hearing until next month. They chose to proceed.

**SPEAKING IN FAVOR OF THE PETITION:**

Attorney Pelech spoke on behalf of the applicant and owner. The Alzheimer's Daycare Unit has discovered that their space needs are more than what is on-site. The number of wheelchair patients is greater than what they anticipated and they don't have enough physical space to move them around. They are not adding any additional patients but require additional space for the same number of patients. Because the parking requirements are based on square footage, they are required to seek a variance for 22 spaces where 46 spaces are required. In 2000 a variance was granted for 22 spaces where 42 spaces were required. The requirement has increased because of the addition by 4 spaces. Alternatives were explored before coming to the Board and it was concluded that they could not rearrange the space comfortably in any other way. The parking requirement of 22 spaces is really more than is needed for the property. The Senior Citizens who utilize a portion of the building usually arrive by van. They provided a parking count that was done three times a day over the past 3 weeks. In the morning, around 8:30 a.m., they averaged between 5-8 cars, at noontime they averaged 15-17 and at 3:30 pm they averaged from 6-12 cars.

Attorney Pelech indicated that they felt the variance requirements were met by the application. The addition is to the rear of the addition so it is not going to diminish any surrounding property values. It meets all of the setback requirements, lot coverage requirements, height requirements and it will not be visible from the street. Surrounding properties will not be effected. It will be a benefit to the public interest which is to serve the needs of the senior citizen population. The new space will provide better care and facilities for Alzheimers patients.

Attorney Pelech stated that the zoning restriction as applied to the applicant's property interferes with the reasonable use of the property, considering the unique setting of the property and its environment. There will be no increase of staff or patients as a result of the granting of the variance. The requirement of 46 parking spaces is unreasonable. All of the daycare patients do not drive. The vast majority of senior citizens utilize the Senior Citizens Van. Attorney Pelech did not believe that there was a fair and substantial relationship between the parking requirement and the specific restriction on the property, given the special use of the property as a Senior Citizen Center and an Alzheimers Daycare. The general purpose of the parking ordinance is to provide ample off street parking to avoid congestion on the streets. The 22 spaces that are currently provided do that and the spaces are not fully utilized at the present time. The variance will not injure the public or private rights of others as the nearest effected abutter is the Portsmouth Housing Authority that is part owner of the property and joins in the application.

The spirit and intent of the ordinance will not be broken by granting the variance. Adequate off street parking is on-site now and they do not have any spill over onto to Parrott Avenue. One of their largest problems is keeping non-related individuals using their parking spaces. As they have very specialized patients who do not arrive in their own vehicles. The granting of the variance will do substantial justice. As no additional parking is necessary because there are no new patients or staff, they believe that the granting of the variance will do substantial justice. The hardship upon the applicant if the variance is denied is certainly not outweighed by any benefit to the general public.

Ms. Fran Joseph, the Executive Director of Compass Care, was present to answer any questions. Members of the Board were also present.

Mr. Parrott asked if any of the parking spaces were being leased to anyone else? Ms. Joseph indicated no.

Chairman Le Blanc asked what the hours of operation were? Ms. Joseph indicated that they were 8:00 a.m. to 4:00 p.m.

Vice-Chairman Horrigan asked about the 2<sup>nd</sup> floor activity room. Attorney Pelech indicated that that room was shared by the Senior Citizen Center and the Alzheimers Daycare.

**DECISION OF THE BOARD:**

Vice Chairman Horrigan made a motion to grant the petition as presented and advertised. Mr. Parrott seconded. Vice-Chairman Horrigan indicated that they had previously granted the same variance about 3 years ago. Essentially they were being asked for an expansion of the building for some obviously good purposes which are in the public interest and nothing else will change, including the current parking. Therefore, it seemed to Vice-Chairman Horrigan that they were trading off parking spaces, which had previously been done, for additional space for Alzheimer patient care and an expansion of a very heavily used activity room in the Senior Center. The zoning restriction, being the parking, would interfere with the property owner's reasonable use of the property in that if you put 46 spaces on the lot it would look like a used car lot. Visually, it would be forcing the applicant into an unreasonable use of the property. It has been pointed out to the Board that the current parking is more than adequate as most of the uses of this facility are brought by bus and vans. It follows that there is no fair and substantial relationship between the Zoning Ordinance and specific restriction on this property. The parking requirements do not fit the basic nature of this property. It is hard to imagine how this would interfere with the public or private rights of others. The current building with its parking has worked adequately over the last 3 years. The requested variance is consistent with the spirit of the ordinance. The ordinance provides for the welfare of our senior citizens, as well as other citizens. Substantial justice is done by granting the variance as no one is being harmed by an injustice. Granting the variance will not diminish the value of surrounding properties. The plans reflect a very tasteful addition and the appearance of the building will not be changed at all. At the worse, it won't have any effect on property values but Vice-Chairman Horrigan suspected that it may increase the values of surrounding properties.

Mr. Parrott agreed with Vice-Chairman Horrigan.

The motion to grant passed unanimously with a 5-0 vote.

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A motion to continue past 10:00 p.m. was made and seconded. The motion passed unanimously.  
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10) Petition of **William J. Wood, owner, Henry and Mary Perron, applicants**, for property located at **59 Swett Avenue** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow the following: a) 3’5” x 20’8” front porch with an 18’ front yard where 30’ is the minimum required, and b) a 28’ x 28’ two story addition with a 21’ front yard where 30’ is the minimum required. Said property is shown on Assessor Plan 232 as Lot 62 and lies within the Single Residence B district. Case # 7-9

**SPEAKING IN FAVOR OF THE PETITION:**

Henry Perron spoke on behalf of his petition. He distributed a Petition in favor of his variance which was signed by many of his neighbors. He indicated that this variance would not be contrary to the public interest as the house has been empty for 2 years. The addition is going to be 11’ back from the front of the house, which will make it 21’ from the road. The neighbors are all very happy that a new family is moving in and the addition will be setback from the road further than the house is now. Special conditions exists with respect to the property such that literal enforcement of the variance results in an unnecessary hardship. The addition will be in line with the garage and they won’t be able to pass between the house and the addition, which is why they were asking for the variance. There was no fair and substantial relationship between the general purpose of the Zoning Ordinance and the specific restrictions on the property. They obviously cannot move their house. The variance would not injure the public and private rights of others as they have spoken to many of their neighbors and even called the abutter to the right in Florida and talked to her, and no one is in opposition. They are a family of six and this will give them a place where they can live as a family. Surrounding property values will be increased by this addition.

Vice-Chairman Horrigan asked about the current porch which appears to need replacement? Mr. Perron indicated that the porch will be taken off and the addition will house the new entrance. This will improve the non-conformance.

**DECISION OF THE BOARD:**

Mr. Parrott made a motion to grant the petition as presented and advertised. Mr. Marchewka seconded. Mr. Parrott felt that this addition, while non-conforming, is more consistent with the ordinance and setback further from the road. Given the size of the lot and the orientation of the house, this is the logical thing to do. The requested variance will not be contrary to the public interest because it will improve the house and adjacent properties. Special conditions exist with respect to the property with the orientation of the house on the odd shaped lot. The lot has access on two streets. No fair and substantial relationship exists between the purpose of the Zoning Ordinance and the specific restriction on the property. In this case, the addition will sit on the site just fine. The restriction interferes with the reasonable use because the way these folks want to put the addition on is the only logical way to do it and it will be consistent with the back of the house and the garage. The variance will not injure the public or private rights of others, as evidenced by the Petition signed by the neighbors. The requested variance is consistent with the spirit of the ordinance as this will allow the use of the property and will not harm the rights of others. Substantial justice is done as it will make the house more useable for the owners. Surrounding property values will not be diminished or the neighbors would not have signed the petition.

Mr. Marchewka agreed with everything that Mr. Parrott stated and added that, once again, the Board was dealing with a residence on a lot that pre-dates the existing zoning. This neighborhood does not have a



conforming house in it. The Board's job is to look at the reasonableness of the request and he felt this was a very reasonable request considering the shape of the lot and the proximity of the lot to a great deal of open space on the lot next to it. It would not diminish any property values and it looks like he certainly will improve not only his residence but the neighborhood as well.

Vice-Chairman Horrigan stated that both variances were front yard setbacks and those dimensions are for the safe passage of traffic. However, Swett Avenue is a dead end and a very quiet neighborhood and not a setting where allowing variances on the front yard setback will be a major problem. He felt this was a very reasonable variance and should be granted.

The motion to grant passed unanimously with a 6-0 vote.

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**III. Adjournment**

There being no further business to come before the Board, the Board acted unanimously to adjourn at 10:15 pm and meet at the next scheduled meeting on July 22, 2003 at 7:00 p.m. in the City Council Chambers.

Respectfully submitted,

Jane M. Shouse  
Secretary

/jms